

रजिस्टर नं० पी०/एस० एम० १४.



# राजपत्र, हिमाचल प्रदेश

## (असाधारण)

हिमाचल प्रदेश राज्यशासन, द्वारा प्रकाशित

शिमला, मंगलवार, 7 अक्टूबर, 1980/15 आश्विन, 1902

हिमाचल प्रदेश सरकार

LAW DEPARTMENT

NOTIFICATION

Simla-171002, the 4th October, 1980

No. LLR-E (9) 10/79.—The Code of Criminal Procedure (Amendment) Ordinance, 1980 (No. 12 of 1980) recently promulgated by the President, which has already been published in the Gazette of India (Extraordinary) Part-II, Section 1, dated the 23rd September, 1980, is hereby republished in the Himachal Pradesh Government Rajpatra, for the general information of the public.

G. S. CHAUHAN,  
Under Secretary.

## MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 23rd September, 1980/Asvina 1, 1902 (Saka)

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT)  
ORDINANCE, 1980

No. 12 OF 1980

Promulgated by the President in the Thirty-first Year of the Republic of India.

An Ordinance further to amend the Code of Criminal Procedure, 1973.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Code of Criminal Procedure (Amendment) Ordinance, 1980.

(2) It shall come into force at once.

2. *Act 2 of 1974 to be amended temporarily.*—During the period of operation of this Ordinance, the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), shall have effect subject to the amendments specified in sections 3 to 9.3. *Amendment of sections 108, 109 and 110.*—In sections 108, 109 and 110 of the principal Act, for the words “a Judicial Magistrate of the first class”, the words “an Executive Magistrate” shall be substituted.4. *Amendment of section 196.*—In section 196 of the principal Act,—

(a) in sub-section (1), in clause (a), for the words, figures and letters “section 153B, section 295A or section 505”, the words, figures, letter and brackets “section 295A or sub-section (1) of section 505” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—  
“(1A) No Court shall take cognizance of—

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.”;

(c) in sub-section (3), for the words, brackets and figure “under sub-section (1)”, the words, brackets, figures and letter “under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)” shall be substituted.

5. *Amendment of section 436.*—In section 436 of the principal Act, in sub-section (1), in the second proviso, after the word and figures “section 116”, the words, figures and letter “or section 446A” shall be inserted.

6. *Amendment of section 437.*—In section 437 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds, for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.”;

- (b) in sub-section (2), for the words “the accused shall, pending such inquiry, be released on bail”, the words, figures and letter “the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail” shall be substituted;
- (c) in sub-section (4), for the word “reasons”, the words “reasons or special reasons” shall be substituted.

7. *Amendment of section 446.*—In section 446 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.”.

8. *Insertion of new section 446A.*—After section 446 of the principal Act, the following section shall be inserted, namely:—

“**446A. Cancellation of bond and bail-bond.**—Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition—

- (a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and
- (b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom

the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.”.

**9. Substitution of new section for section 478.**—For section 478 of the principal Act, the following section shall be substituted, namely:—

**“478. Power to alter functions allocated to Executive Magistrates in certain cases.**—If the Legislative Assembly of a State by a resolution so permits, the State Government may, after consultation with the High Court, by notification, direct that references in sections 108, 109, 110, 145 and 147 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class.”.

**10. Consequential amendment of Act 34 of 1978.**—Section 72 of the Delhi Police Act, 1978 shall be omitted.

**11. Saving.**—All proceedings under sections 108, 109 and 110 of the principal Act, pending before any Judicial Magistrate immediately before the commencement of this Ordinance shall, notwithstanding anything contained in this Ordinance, be dealt with as if this Ordinance had not been promulgated.

**N. SANJIVA REDDY,**  
*President.*

**R. V. S. PERI SASTRI,**  
*Secretary to the Govt. of India.*